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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 446

PAUL AHRENS, ET AL.,

Petitioners

vs.

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

Opinions Below

Neither the order of the district court denying the petition for a writ of habeas corpus (R. 7-9), nor the order of the Court of Appeals dismissing the appeal (R. 23) is reported.

Jurisdiction

The Court of Appeals for the District of Columbia entered its Order Dismissing Appeal on October 30, 1947 (R. 23). The petition for a writ of certiorari was filed on November 19, 1947, and certiorari was granted on February

2, 1948 (R. 25). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Questions Presented

1. Whether a Federal court may issue a writ of habeas corpus on the petition of one detained outside the territorial jurisdiction of the court to which the application is made, and, if so, whether the Attorney General is a proper party respondent in this proceeding.

2. Whether orders of removal issued against resident German nationals during a state of war between the United States and Germany are valid under the Alien Enemy Act of 1798, as amended, despite the "unconditional surrender" of the German Reich and the consequent Allied military control of Germany.

3. If the second question be answered in the affirmative, a further question presented is whether the Alien Enemy Act, as so applied, is constitutional.

Statute, Proclamation and Regulations Involved

The provisions of the Alien Enemy Act of 1798, R. S. 4067-4070, as amended, 40 Stat. 531, 50 U. S. C. 21-24, are set out in Appendix A, *infra*, pp. 43-45. The text of Presidential Proclamation 2655 (10 F. R. 8947) and of the Attorney General's regulations issued pursuant to the latter Proclamation are set forth in Appendices B and C, respectively, *infra*, pp. 45-47, 47-49.

Statement

Petitioners are German alien enemies presently detained at Ellis Island, New York; orders of removal have been issued against them by the Attorney General under Presi-

dential Proclamation 2655, promulgated on July 14, 1945, pursuant to the Alien Enemy Act of 1798. The removal orders are based on a finding by the Attorney General that each of the petitioners is "dangerous to the public peace and safety of the United States because he has adhered to a government with which the United States is at war or to the principles thereof." The petition for a writ of habeas corpus (R. 1-3) which instituted this proceeding was filed in the United States District Court for the District of Columbia on July 17, 1947, and was amended by leave of that court on July 23, 1947 (R. 4-6). As amended, it alleged *inter alia* that the 139 persons (of whom 129 are petitioners herein)[1] on whose behalf the writ was sought, were confined, subject to the custody and control of the Attorney General (respondent herein) on Ellis Island, New York, and were subject to, and in imminent danger of, deportation (R. 2). As to "a considerable number" of such persons, it was alleged that they were not "in fact alien enemies, as defined in the [Alien Enemy] Act * * * in that their citizenship was taken from them without due process of law and as a result of war hysteria" (R. 4). Included among other allegations equally applicable to all of the petitioners were averments that at a "perfunctory" hearing before "the Board appointed", they were denied the right of confrontation, cross-examination, the right to counsel, or the opportunity to adduce testimony on their own behalf, and that such Board was neither fair nor impartial but "had already prejudged the merits of the case" (R. 2); that it could be demonstrated to the court that such persons "have not been active members of the Nazi party or adhered to the Nazi form of government" (R. 3); that at the time when orders of removal were issued against

[1] Of the 129 listed here as petitioners, nine have been released from custody. See Appendix D, *infra*, pp. 49-52.

them, "there was neither any 'hostile nation or government' of which they were natives or citizens, nor any such entity against which the United States could any longer be at war within the purport of the Alien Enemy Act" (R. 5), and that consequently no lawful authority existed whereby such persons could be removed (R. 6).

On July 21, 1947, respondent filed a motion in the district court to dismiss the petition for a writ of habeas corpus on both jurisdictional and substantive grounds, pointing to the fact (1) that all of the petitioners therein were, and were alleged to be, without the territorial confines of the District of Columbia, and (2) that all of the issues raised by petitioners had been adversely decided against them in prior actions, including specifically a previous habeas corpus proceeding entitled *Hermann Agne et al.* v. *Tom C. Clark, Attorney General*[2] which had been dismissed in both the District and Circuit Court of Appeals for the District of Columbia (R. 6-7).[3] At the hearing on this motion, held on July 23, 1947, an oral application for a stay to prevent removal was made. On the same day, the district court entered its order dismissing the petition and denying the requested stay (R. 7-9). In the order dismissing the petition, it was determined that of the 139 persons on whose behalf the writ was sought, 99 were parties to the prior *Agne* proceeding,[4] and that, as to them, the petition "in substance and in fact" constituted a mere application for reconsideration of issues already fully litigated in that case (*Ibid.*)

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[2] Habeas Corpus No. 3132, United States District Court for the District of Columbia.

[3] The amendment of the petition for a writ of habeas corpus on July 23, 1947, referred to above, p. 3, was in an effort to meet the second ground of the motion. The matter is discussed at pp. 4-6 of our memorandum in opposition to petitioners' motion herein for a stay under Rule 45(1).

[4] Of these, some 89 are among the 129 petitioners herein.

After filing notice of appeal on July 24, 1947 (R. 10), petitioners applied to the court below for a stay order against the Attorney General in connection with removal proceedings, pending determination of the appeal. A hearing was held in chambers on this application before Stephens and Clark, J.J. At that hearing, the court below indicated unwillingness to deny the requested stay in view of the possible applicability of Rule 45(1) of the Rules of this Court. Accordingly, the application for a stay was granted, by order dated August 13, 1947, and the court below suggested that the Government file a motion to dismiss the appeal. Such a motion was filed on behalf of the Attorney General on August 15, 1947 (R. 11-15) and was sustained by the court below by *per curiam* order dated October 30, 1947 (R. 23).

Summary of Argument

I

Petitioners in this case are confined on Ellis Island which is within the jurisdiction of the District Court for the Southern District of New York. Their filing of a petition for a writ of habeas corpus in the District Court for the District of Columbia and their designation of the Attorney General as respondent raises jurisdictional and procedural difficulties which the court below held to be a bar to their suit. We believe that the Attorney General, not being the immediate physical custodian of the petitioners is not a proper party respondent; on the other hand, no specific objection was made to the designation of the Attorney General as respondent in the courts below and the Government makes no such objection in this Court. In our view, a defect of this sort can be waived.

The problem of the territorial jurisdiction of the District Court of the District of Columbia is a more difficult

one. The Government's primary concern in this respect is that no rule be established which would generally permit applicants for a writ of habeas corpus to bring their suits in a district court far removed from their place of confinement and thus require the Government, in response to a writ of habeas corpus, to transport the prisoners to such distant forum. Such transportation would involve the unwarranted expenditure of money and personnel and create a risk of escape from custody. We believe that there is no theory which justifies the institution of this suit in the District of Columbia. On the other hand, the Government is anxious to secure a final disposition of this litigation and is willing to waive, if it can, any objection to the jurisdiction of the courts below and of this Court.

II

The Alien Enemy Act of 1798 grants to the President a power to restrain or remove alien enemies "whenever there is a declared war between the United States and any foreign nation or government * * *." This Court has time and again held that a federal statute whose period of effective applicability is limited to a state of war or some other like characterization continues in effect until a formal termination of the war by a political act of either the Executive or the Congress or both. These decisions serve to dispose of petitioners' contentions that the power of removal granted to the President by the Alien Enemy Act is no longer effective because of the unconditional surrender of Germany and the subsequent control of Germany by the Allied Control Council. Nothing in the legislative history affords any ground for distinguishing this statute from the many other statutes this Court has so construed. In the Alien Enemy Act, Congress intended to, and did, give to the President a complete discretionary power to provide

for the conduct to be observed on the part of the United States toward alien enemies at any time during "a declared war." In 1920, and again in July of 1947, Congress passed legislation containing an implicit recognition of the continuance of the President's power under the Alien Enemy Act, notwithstanding the Armistice in the First World War and the unconditional surrender in this.

The judiciary cannot and should not determine for itself when the war has come to an end. That is a political problem of some delicacy with which this Court has consistently refused to deal.

To deny to the Government the power to remove alien enemies after the termination of active hostilities would be virtually to deny to the Government the power of removal. Deportations in time of active hostilities are now, as they were in 1798, virtually impossible. Moreover, it is often not in the interest of the Government to release to his native land during active hostilities an alien resident in this country who might, if removed, make a substantial contribution to the war effort of the enemy.

III

The statements of those who played a large part in the drafting of our Constitution make it perfectly clear that the war power conferred on the Federal Government by the Constitution includes a plenary power over alien enemies. This Court early recognized in *Brown* v. *United States*, 8 Cranch 110, that one of the attributes of the war power was a right of capture of the property and person of alien enemies. That plenary power was recognized by the English courts in decisions before, and roughly contemporaneous with the adoption of our Constitution, and it is also echoed in the law of nations.

Neither the unconditional surrender of Germany nor any

subsequent events detract from the plenary power of the Federal Government over alien enemies. The decisions of this Court teach that it is not the function of the judiciary to fix a date for the termination of the war. This Court has but recently recognized that a decision of the President, like that which he has here made in providing for the removal of alien enemies after the unconditional surrender, is not open to judicial inquiry, involving as it does a political prognosis in the fields of national security and foreign relations.

ARGUMENT

I

The Jurisdictional and Procedural Grounds Taken by the Court Below

The *per curiam* order dismissing petitioners' appeal to the court below (R. 23) contains citations to four cases, which, if correctly decided, compel the conclusion that neither of the courts could have properly granted the writ of habeas corpus sought by petitioners. Of the cases cited, *United States ex rel. Belardi* v. *Day*, 50 F. 2d 816 (C. C. A. 3) and *United States ex rel. Harrington* v. *Schlotfeldt*, 136 F. 2d 935 (C. C. A. 7) hold that jurisdiction to entertain *habeas corpus* proceedings vests only when the applicant for such relief is physically present within the territorial limits of the court's jurisdiction. *Jones* v. *Biddle*, 131 F. 2d 853 (C. C. A. 8), certiorari denied, 318 U. S. 784, and *Sanders* v. *Bennett*, 148 F. 2d 19 (App. D. C.), also cited by the court below, involved dismissals of petitions for writs of *habeas corpus* sought by federal prisoners against the Attorney General and the Director of the Bureau of Prisons, respectively. In the former case, although not in the latter, the application had been made to the federal district court having territorial jurisdiction over the place of confinement.

In sustaining the denials of the writ, the courts in both instances held that the appropriate respondent was the penitentiary warden and not the supervisory official named.

As stated *supra*, pp. 2-3, petitioners' application was made to the United States District Court for the District of Columbia at a time when petitioners were, and were alleged to be, interned at Ellis Island, New York. Moreover, the writ was sought against the Attorney General, although numerous other applications, made by alien enemies subject, as are petitioners, to removal orders, have named as respondents their immediate custodians.[5] In citing the decisions above discussed, it is clear, we believe, that the court below dismissed petitioners' appeal for lack of jurisdiction and because the proceeding was not brought against a proper party respondent. It is evident that if the jurisdictional and procedural decisions upon which the court below acted are here applicable, the district court could not give effect to this Court's mandate even if petitioners are correct on the merits.[6]

The Government has no desire to delay a decision on the merits of this case by requiring the habeas corpus proceeding to be commenced anew in the Southern District of New York and to wend its way here again via the Circuit Court

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[5] With respect to internees at Ellis Island, see *United States ex rel. Kurt G. W. Ludecke* v. *W. Frank Watkins, District Director of Immigration*, No. 147 Misc., this Term, certiorari denied January 12, 1948; *United States ex rel. Julius Kessler and Martha J. Kessler* v. *W. Frank Watkins, etc.*, No. 414, this Term, certiorari denied December 8, 1947. As to internees elsewhere, see the petition for a writ of certiorari in *United States ex rel. Hans Ackermann* v. *J. L. O'Rourke, Officer in Charge of Alien Internment Camp at Crystal City, Texas*, No. 584, this Term, pending.

[6] The power of this Court to issue original writs of habeas corpus in aid of its appellate jurisdiction is of course recognized, but it is extremely doubtful that the jurisdictional defects suggested by the court below call for the use of this power, ordinarily exercised only in exceptional circumstances, and not when, as here, there is an obvious forum in the New York federal district courts available to petitioners. See *Ex parte Abernathy*, 320 U. S. 219.

of Appeals for the Second Circuit. On the contrary, the Government is anxious to have the question of its right to remove petitioners authoritatively determined by this Court at the earliest possible moment, in order that it may either remove or release petitioners and not be required to retain them in its custody. To the extent that the above obstacles to the exercise of jurisdiction may be waived, the Government is now agreeable to waiving them.[7]

But the Government is concerned with the possible far-reaching effects of a decision that habeas corpus may be brought against the Attorney General in the District of Columbia by any person detained under the ultimate supervisory authority of the Attorney General. Such a holding would apply to all Federal prisoners, not merely to persons subject to removal under the Alien Enemy Act. As this Court knows, habeas corpus proceedings are customarily brought against the immediate custodian in charge of the place of detention, and the writ brings the prisoner before the nearest court. But if such persons could apply for habeas corpus against the Attorney General in the District of Columbia, it would be necessary for the Government to transport them to the District from wherever they were detained. The consequences, both from the viewpoint of expenditure of money and custodial personnel, and from that of the danger to the public from the possibility of escape, if all prisoners in Alcatraz, Atlanta and Leavenworth who file petitions for habeas corpus were required to be transported to the District of Columbia, need no elaboration.

Any rule which would permit all prisoners to file petitions—the vast majority of which, experience shows, are

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[7] In the courts below, the Government contended that the district court had no jurisdiction because the proceeding was not brought in the district in which the petitioners were detained (R. 7, 11, 12).

without merit—in the District of Columbia, and thereby to obtain free—and perhaps repeated[8]—trips to the Nation's capital, would result in serious injury to the public interest. The position we take, therefore, is that the Court should not hold that prisoners or other persons detained can, as a matter of right, institute habeas corpus proceedings outside the district in which they are detained. The Court could avoid that result:

(1) by holding that any requirement as to bringing the proceeding in the district of detention is not strictly jurisdictional, but that it is the general rule which must be followed:

(a) except in very unusual circumstances, or

(b) except when the respondent expressly waives any objection to the court's exercise of jurisdiction,

(2) by applying a doctrine in the nature of *forum non conveniens* so as to require the institution of the proceeding generally in the district of detention,

(3) by holding that as a matter of strict jurisdiction, the proceedings must be brought in the district of detention, or

(4) by holding that the named respondent must be an officer having immediate physical custody unless an objection on this ground is waived.

Recognition of a general rule requiring proceedings generally to be instituted in the district of detention on any of the above theories would conform with the practice in the past in all but a minute portion of the thousands of habeas corpus cases which have been filed.

In the light of these considerations, we turn to the questions (1) whether the Attorney General was the proper

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[8] See *Price* v. *Johnston*, No. 111, now pending.

respondent and (2) whether the suit may be brought outside the district in which the petitioners are detained.

1. There is little room for doubt that an officer who, like the Attorney General in these proceedings, can in no sense be thought to have "actual physical custody" of the petitioners, is not properly named as respondent in a petition for a writ of habeas corpus. *Jones* v. *Biddle*, 131 F. 2d 853 (C. C. A. 8), certiorari denied, 318 U. S. 784; *Sanders* v. *Bennett*, 148 F. 2d 19 (App. D. C.); cf. *McGowan* v. *Moody*, 22 App. D. C. 148, 163. See *Wales* v. *Whitney*, 114 U. S. 564, 574, in which this Court stated that the acts of Congress concerning the writ of habeas corpus "contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary." Although this seems to be the general rule, there are cases which hold that in the absence of any objection by the Government and when the Government has resisted the issuance of the writ on the merits, a "cause exists in that state of the proceedings and an appeal lies from denial of a writ." *Ex parte Endo*, 323 U. S. 283, 305, citing *Ex parte Milligan*, 4 Wall. 2, 112; *Ex parte Quirin*, 317 U. S. 1, 24. Although this Court has not explicitly so stated, the rationale of the group of cases last cited would seem to be that the United States cannot, after failing to make objection to the lack of a proper respondent which has the effect of causing the petitioner to decide not to commence a new action against a proper respondent, then change its position on a subsequent appeal. In this case, the Government made no specific objection in the courts below to the designation of the Attorney General (R. 7, 11, 12). We see no reason why the United States cannot waive this particular objection since it has the effect merely of per-

mitting suit against one Government officer rather than another. Accordingly, we think that this case comes within the exception recognized in the *Endo* decision, and that the petition should not have been dismissed on that ground.

2. The question of the jurisdiction of the district court over a petition for *habeas corpus* filed by applicants not within the territorial confines of the district is more difficult. In the Brief for the United States in the *Endo* case, No. 70, October term, 1944, this issue was fully canvassed. And the opinion of this Court in the *Endo* case sets out virtually all of the materials relevant to this jurisdictional issue.[9] Because the applicant for habeas corpus was confined within the district when her petition for habeas corpus was filed, and had only subsequently been moved, this Court found it unnecessary in that case to resolve the more general problem, holding that jurisdiction over a respondent was, in that situation, enough. In this case, however, we think that there is no escape from the resolution of the territorial jurisdiction issue unless it be on the ground that there is no proper party respondent in the District of Columbia.

The conclusion of the Government's analysis of the relevant authorities in the *Endo* brief (p. 53) was that "It seems to be fairly certain that a court will rarely entertain a habeas corpus proceeding to challenge the detention of a petitioner beyond its territorial jurisdiction; but there are cases in which it has been done, usually because of circumstances which caused the actual controversy to relate to matters arising within the jurisdiction." In this case we can perceive of no special circumstances which point toward a conclusion that the district court did have jurisdiction.

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[9] See, in addition, *Ex parte Yee Hick Ho*, 33 F. 2d 360 (N. D. Cal.); cf. *In re Bickley*, 3 Fed. Cas. No. 1387 (S. D. N. Y.); *Ex parte O'Brien* [1923], 2 K. B. 361.

Indeed this case, involving 139 petitioners as it did, dramatizes the possible undesirability of a contrary conclusion. Issuance of the writ, absent a stipulation to the contrary, would have required the transportation of all the petitioners from New York to the District of Columbia (28 U. S. C. 458) with concomitant expense and utilization of custodial personnel. The requirement would not be otherwise were these persons confined in San Francisco, nor would the situation be different were the petitioners ordinary inmates of Federal penitentiaries rather than alien enemies. Nor is there any reason why it would be more difficult or less convenient for the case to be heard in the Southern District of New York than in the District of Columbia.

Accordingly, we submit that, apart from the Government's present willingness to waive the objection for purposes of this case only, there is no basis for reversing the courts below with respect to this jurisdictional ground for decision.

We shall proceed, in the remainder of this brief, on the assumption that the courts below had power to pass upon the merits of petitioners' contentions. We do so because we believe that if this Court should decide that there is jurisdiction over this cause there is no occasion for a remand to either of the courts below for consideration of the case on its merits since they have but recently upheld the power of the Attorney General on the merits in the face of identical contentions. See *Citizens' Protective League, et al.* v. *Clark*, 155 F. 2d 290 (App. D. C.), certiorari denied, 329 U. S. 787.

II

The Alien Enemy Act of July 6, 1798, as amended on April 16, 1918, Authorizes the Removal of the Petitioners

President Truman's Proclamation No. 2655 (Appendix B, *infra*, pp. 45-47), issued on July 14, 1945, grants to the At-

torney General the power to remove from the United States all alien enemies interned within the United States, "who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the [Governments of Japan, Germany, Italy, Bulgaria, Hungary, or Rumania] or to the principles of government thereof". It is the position of the Attorney General that the President's authority to issue this Proclamation and the Attorney General's power to effectuate it with reference to the German nationals here involved, is unassailable. Not only does the plain language of the Alien Enemy Act grant the power here exercised, but that power has been consistently recognized and acknowledged by the courts for almost a century and a half.

Section 21 of the Alien Enemy Act [10] prescribes two alternative sets of conditions upon the fulfillment of which the powers granted the President of the United States may be exercised. If (1) there is a declared war between the United States and any foreign nation or government and the President makes public proclamation of the event, or (2) any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President publicly proclaims that event, the President is au-

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[10] For convenience, the sections of the Alien Enemy Act will, throughout this brief, be numbered as they are in Title 50 of the United States Code

The provisions of this Act are set out in Appendix A, *infra*, pp. 43-45. Originally enacted by the Fifth Congress on July 6, 1798 (1 Stat. 577; R. S. 4067-4070), the first section of the Act was amended on April 16, 1918, so that it would apply to female enemy aliens as well as males. 40 Stat. 531.

The Alien Enemy Act should not be confused with what are commonly referred to as the alien and sedition laws, applicable to friendly aliens, which were enacted on June 25, 1798 (1 Stat. 570) and July 14, 1798 (1 Stat. 596); these laws, by their own terms, were to be in effect for only two years.

thorized, *inter alia*, to direct the manner and degree of the restraint to which enemy aliens shall be subject, and to provide for the removal of enemy aliens. We shall show that the first set of conditions has been met and that the Attorney General, in the exercise of the powers granted him by the President, had the power to issue, and now has the power to effectuate, the orders of removal against the petitioners, German "natives, citizens, denizens, or subjects".[11]

There is a declared war between the United States and the German Government, and neither the unconditional surrender of Germany nor any subsequent events have rendered the Alien Enemy Act inoperative.—On December 11, 1941, a joint resolution declaring the existence of a state of war between the United States and the Government of Germany was passed by Congress and approved by the President. 55 Stat. 796. In his Proclamation No. 2655 (Appendix B, *infra*, p. 46), the President of the United States publicly proclaimed that event. Unless the unconditional surrender of the German Government or the allied military control of Germany can be said to have terminated the state of war so declared and proclaimed, there is no doubt that the President had the authority, exercised on July 14, 1945, to provide for the removal of German aliens who were dangerous to the public peace and safety because they had adhered to the German Government or the princi-

[11] In their petition for a writ of certiorari (p. 4), petitioners state, as their second question presented, that "A considerable number of the petitioners are not alien enemies and hence could not be removed." We are at a loss to understand what this statement is intended to convey unless it be simply another way of stating their basic contention that there is no longer a war and, hence, no such status as enemy alienage. 114 of the petitioners are German nationals, resident in this country, who have never been naturalized. The remainder were granted citizenship, but were subsequently denaturalized. No attack is here made on the validity of the denaturalization proceedings, and we shall, therefore, assume that there is no such question in this case.

ples thereof, and that the Attorney General has and had the power to remove the petitioners.

The petition for a writ of certiorari does not make entirely clear the nature of the petitioners' contention in this respect. At one point, the petition asserts that "When the orders of removal were issued there was no longer a war * * *;" at another point, petitioners ask this Court to "determine the question as to whether the war is now at an end and whether the proclamation by the President of the United States is now binding." (Pet. 4.) We believe that whether the crucial date be the date of the original orders of removal [12] or the present is a question the answer to which is of no consequence in determining the continued applicability of the Alien Enemy Act and of little or none in determining the constitutionality of the Act as here applied.[13] If this difference in dates be deemed to have any significance, it is important to bear in mind that the delay in the execution of the orders of removal is attributable almost entirely to the overlapping series of related litigations which petitioners have brought against the Attorney General for the purpose of preventing their removal.[14]

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[12] These are set out in Appendix D, *infra*, pp. 49-52.

[13] The constitutional question is discussed in point III of this brief.

[14] See memorandum for the respondent filed with this Court in answer to petitioners' motion for a stay under Rule 45(1) of the Rules of this Court. This memorandum was submitted in mimeographed form; for the convenience of the Court, we have had this memorandum printed, and printed copies have been filed with the Clerk of the Court. We wish to add but one thought to what is stated in that memorandum: We believe that the purpose of Rule 45 (1) is to prevent a court from disturbing the custody of the applicant for a writ of habeas corpus pending the appeal from a denial of the writ when nothing more substantial with reference to the merits than a petition previously adjudged invalid has been filed. We do not believe that Rule 45(1) was designed to stay the hand of the Executive Branch with reference to the applicant. *In re McKane*, 61 Fed. 205 (C. C. S. D. N. Y.); but *cf. Ex parte Colonsaro*, 138 F. 2d 100 (C. C. A. 3). Rule 45 (2), which governs appeals from orders discharging

This Court has consistently held that a federal statute, the applicability of which is limited, by one form of words or another, to a state of war, does not cease to be operative until the state of war has been terminated by treaty, act of Congress, or executive proclamation. *United States* v. *Anderson*, 9 Wall. 56; *The Protector*, 12 Wall. 700; *McElrath* v. *United States*, 102 U. S. 426; *J. Ribas y. Hijo* v. *United States*, 194 U. S. 315; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146; *Kahn* v. *Anderson*, 255 U. S. 1; cf. Mathews, *The Termination of War* (1921) 19 Mich. L. Rev. 819, 820. In each of the cited cases, presenting the same question of statutory interpretation in a variety of circumstances, this Court has found that Congressional use of words which measured the duration of a granted power by "war" or "peace" evidenced a Congressional purpose that the power would terminate on a date definitely fixed by appropriate executive or legislative action. Suggestions that the termination of war, for the purpose of measuring the availability of a statutory power or privilege, was a matter to be determined by judicial declaration or private judgment have at all times been rejected. See, e.g., *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. at 167; *United States* v. *Anderson*, 9 Wall. at 70; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51. See *infra*, pp. 26-32.

But the petitioners seek to avoid these decisions on two grounds. The first, which may be shortly disposed of, is

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writs of *habeas corpus*, by contrast provides that pending an appeal, the prisoner may be remanded to custody or enlarged upon recognizance as the court rendering the decision may determine.

Since there is no indication that petitioners will desist from repeating their pattern of delay, the problem of judicial administration raised by the alleged conflict between rule of court and statutory executive power presently pending before this Court in connection with petitioners' motion for a stay under Rule 45 (1), continues to be of great importance. The problem would reach its most acute point if petitioners continue their litigations until a formal treaty of peace terminates the state of war.

that "not later than October 29, 1945, the political branch of the United States Government had ended the war with Germany" (Pet. 19).[14] But the fact is that on December 31, 1946, long after the issuance of the removal orders here challenged, the President, in proclaiming a "cessation of hostilities," plainly announced that "a state of war still exists." 12 F. R. 1. Cf. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. at 167-168, in which this Court held that the War-Time Prohibition Act, operative "until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States," did not cease to be in effect by reason of the President's statement, in announcing the armistice, that "The war thus comes to an end" or of his mention, in a veto message, of the "demobilization of the army and navy."

The petitioners' alternative argument is that the Alien Enemy Act, unlike other Federal statutes the effective duration of which is "time of war" or like terms, was intended to be applicable only during "war in fact" or "actual hostilities" (Pet. 11). But "While one may not end with the words of a disputed statute, one certainly begins there" (*Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 350), and there is nothing in the text of the Alien Enemy Act to suggest that despite the absence of legislative or executive action affecting, in any way, the declaration of a state of war between the United States and Germany, the power conferred on the President has terminated. On the

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[14] Petitioners fix October 29, 1945, as the date of termination of war by reference to a proclamation allegedly issued on that date by the Allied Control Council for Germany (Pet. 17-19). That date would seem to be erroneous. For an official list of the dates of the various documents and proclamations dealing with the military capitulation of Germany and the ensuing establishment of allied military control, see *The Axis in Defeat*, Department of state Publication 2423.

contrary, Presidential Proclamation No. 2655 and the orders of removal issued pursuant to the proclamation were and are "within the precise terms of the statute." *Citizens' Protective League* v. *Clark*, 155 F. 2d 290, 295 (App. D. C.), certiorari denied, 329 U. S. 787; *United States ex rel. Kessler* v. *Watkins*, 163 F. 2d 140 (C. C. A. 2), certiorari denied, No. 414, this Term; *United States ex rel. Hack* v. *Clark*, 159 F. 2d 552 (C. C. A. 7).

A study of the legislative history, moreover, reveals no Congressional purpose other than that implicit in the words of the statute: a purpose to vest in the President a summary power over enemy aliens while there is "a declared war" so that such persons may be prevented from sowing discord and dissension and taking overt action inimical to the public peace and safety. Those excerpts from the legislative debates upon which petitioners rely have a dual significance, neither of any aid to petitioners. See Pet. 11-14. They show, first, a Congressional purpose to grant to the President the powers conferred by the Act not only during a declared war but also in case of war without a declaration, or, as the Act puts it, when "any invasion or predatory incursion is perpetrated, attempted or threatened." See Appendix A, *infra*, p. 43.[16] They strongly indicate, secondly, as does the entire legislative history of the statute, a firm intention by Congress to confer upon the President a broad and summary power over alien enemies to the fullest

[16] Petitioners' further argument (Pet. 11-12), if we understand it, that the provisions of Sec. 9, Art. 1, of the Constitution led Congress to refer to "a declared war" when it actually meant something less would appear unfounded. Gallatin's suggestion that this section might in some degree limit the power of Congress over alien enemies was vigorously refuted in the debates, it being pointed ou, as has since been judicially declared (*People* v. *Compagnie Generale Transatlantique*, 107 U. S. 59, 62), that the provisions dealt with Africans exclusively. See Annals of Congress, 5th Cong., 2d sess., pp. 1991, 1993. Cf. *United States ex rel. Kessler* v. *Watkins*, *supra*, at 142.

extent necessary in his judgment. Annals of Congress, 5th Cong., 2d sess., pp. 1574, 1575, 1576, 1577, 1581, 1582, 1790, 1980, 1983-93.[17] See *United States ex rel. Kessler* v. *Watkins*, 163 F. 2d at 142-143 (C. C. A. 2), certiorari denied, No. 414, this Term.

Although during the First World War, cases arising under the Alien Enemy Act were heard and decided after the armistice, the reports contain no intimation of any thought, on the part of either counsel or court, that the Armistice was of any significance whatever. See *Ex parte Risse*, 257 Fed. 102 (S. D. N. Y.); *Ex parte Gilroy*, 257 Fed. 110 (S. D. N. Y.); *Banning* v. *Penrose*, 255 Fed. 159 (N. D. Ga.). Indeed, Congress, in 1920, recognized the continued effectiveness of the powers conferred on the President by the Alien Enemy Act of 1798. Although the armistice with Germany had been entered into almost two years before, Congress, on May 10, 1920, provided for the deportation of various groups of aliens, the first among which was aliens then "interned under section 4067 of the Revised Statutes of the United States [Section 21 of the Alien Enemy Act] and the proclamations issued by the President in pursuance of said section." 41 Stat. 593.[18] That this was a distinct recognition of the continued applicability of all the provisions of the Alien Enemy Act after the armistice, becomes clear when it is noted that that Act permits of no differentiation between the power to intern and the power to remove. In passing the Act of

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[17] Some of these references to the Annals of Congress are not references to the debates on the Alien Enemy Act as such but to a discussion of a resolution recommending legislative provisions substantially identical with those that became the Alien Enemy Act. See Annals of Congress, 5th Cong., 2d sess., pp. 1566-1567.

[18] This statute is set forth in pertinent part in the petition for certiorari at pp. 9-10. It has been dropped from the United States Code as obsolete. 8 U. S. C. 157.

May 10, 1920, Congress knew that from 500 to 700 enemy aliens were still interned (H. Rep. No. 143, 66th Cong., 1st sess.; S. Rep. No. 283, 66th Cong., 1st sess.) and reaffirmed the authority which had been conferred on the President to restrain or remove alien enemies while there was a "declared war." Similarly, Congress has recognized the continuation of the power after the unconditional surrender of Germany in World War II by appropriating funds for "* * * all necessary expenses, incident to the maintenance, care, detention, surveillance, parole, and transportation of alien enemies and their wives and dependent children, including transportation and other expenses in the return of such persons to place of bona fide residence or to such other place as may be authorized by the Attorney General * * *." Public Law 166, 80th Cong., 1st sess., at p. 16.

The congressional reaffirmation in 1920, and again in July of 1947, of the President's power over alien enemies, compels the conclusion that that power rests in the President today. Petitioners' reliance (Pet. 8-9) on a joint letter, dated February 5, 1919, sent to the chairman of the House Committee on Immigration and Naturalization by Attorney General Gregory and the Secretary of Labor is, we believe, misplaced. The letter is set forth in Hearings, House Committee on Immigration and Naturalization, H. R. 6750, 66th Cong., 1st sess., p. 42. Similar letters were written by Attorney General Gregory on January 9, 1919 (H. Rep. 1000, 65th Cong., 3d sess., p. 2), and by Attorney General Palmer on May 27, 1919 and August 13, 1919. H. Rep. 143, 66th Cong., 1st sess., p. 2; S. Rep. 283, 66th Cong., 1st sess., p. 2. The letters were written to urge the enactment of legislation providing for the permanent expulsion of interned alien enemies as well as of other aliens who

had been convicted of any of a group of wartime crimes. The pertinent portion of these letters are as follows:

January 9, 1919.

* * * * * * * *

The authority given by the President to regulate the conduct of enemy aliens during the existence of the war, in my opinion, could not properly be used at this time to bring about the deportation of these aliens. There is now, therefore, no law under which these persons can be expelled from the country * * *. [H. Rep. No. 1000, 65th Cong., 3d sess., p. 2.]

February 5, 1919.

* * * * * * * *

There is no law now on the statute books under which these persons can be excluded from the country, nor under which they can be detained in custody after the ratification of the peace treaty. Unless the bill introduced by you, or one similar in character is passed, it will become necessary on the ratification of peace to set free all of these highly dangerous persons. [Hearings, House Committee on Immigration and Naturalization, H. R. 6750, 66th Cong., 1st sess., p. 42.]

May 27, 1919.

* * * * * * * *

In the present state of the law there is no way in which these dangerous interned alien enemies can be deported. Unless Congress takes some action to provide for their deportation under suitable restrictions as to hearings, procedure, etc., they will be turned loose upon the country as soon as a treaty of peace is ratified. [H. Rep. No. 143, 66th Cong., 1st sess., p. 2.]

August 13, 1919.

* * * * * * * *

> There is no law now on the statute books under which these persons can be excluded from the country, nor under which they can be detained in custody after the ratification of the treaty of peace. Unless H. R. 6750, or a bill similar in character, is passed, it will become necessary, on the ratification of the treaty of peace, to set free all of these dangerous individuals. [S. Rep. No. 283, 66th Cong., 1st sess., p. 2.]

A reading of these letters leaves one uninformed as to the reasons for the conclusions that new legislation was essential. Certainly there is nothing in the letters which even suggests that the armistice was thought to limit the power of removal granted by Section 21. Indeed, no reference is made to the Alien Enemy Act in this connection. We are left entirely at large as to the basic reasons, legal or political, which prompted the view expressed in these letters.

We may, of course, speculate. Conceivably, these requests for the enactment of a new statute were prompted by the refusal or failure of the President to issue a proclamation under the Alien Enemy Act which would provide, in such sweeping terms, for the deportation of interned alien enemies—"a choice of remedies rather than a waiver of protection."[19] See *Ex parte Kawato*, 317 U. S. 69, 78,

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[19] Upon the entry of the United States into World War I, President Wilson, in his Proclamation of April 6, 1917 (40 Stat. (Part 2) 1650) quoted Section 1 of the Alien Enemy Act, recited the existence of a state of war, and prescribed the conduct to be observed toward and by German alien enemies. Among the regulations established by the Proclamation were those forbidding the possession of arms or signalling devices, the publication of attacks against the Government, residing in any area prohibited to alien enemies, departing from the United States except under a Presidential permit or court order, etc. Regulation 8 of the Proclamation provided that

> An alien enemy whom the President shall have reasonable cause to believe to be aiding or about to aid the enemy, or to be at large to the danger of the public peace or safety of the United States, or to have violated or to be about to violate any of these regulations, shall re-

note 14. It is possible that the President and his cabinet officers desired to shift to Congress the burden of determining the deportation policy, or that the Secretary of Labor and the Attorneys General were primarily interested in those provisions of the 1920 Act which, being applicable to non-enemy aliens, were not covered by the Alien Enemy Act. Or it may be that since the signature and ratification of the Versailles Treaty were thought to be imminent (see Hudson, *The Duration of the War Between the United States and Germany* (1926), 39 Harv. L. Rev. 1020, 1031), the Attorneys General and the Secretary of Labor thought that additional legislation would be necessary only because the deportations might occur subsequent to ratification. *Cf. United States ex rel. Kessler* v. *Watkins, supra,* 163 F. 2d at 143.

If any of these reasons motivated the letters of the Secretary of Labor and the Attorneys General, their views have no bearing on the problem before this Court. If, despite any indication that consideration was given to the powers vested in the President by the Alien Enemy Act, the letters are read to reflect the view that after the armistice there was no power to remove, we can only suggest that such a conclusion was contrary to the great weight of authority, then as now (see *supra,* pp. 18, 19-21), and that the view of

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move to any location designated by the President by Executive Order, and shall not remove therefrom without a permit, or shall depart from the United States if so required by the President. [40 Stat. (Part 2) 1652].

The Presidential Proclamation of December 23, 1918 (40 Stat. (Part 2) 1918) abrogated Regulation 8 and most of the other regulations contained in the Proclamation of April 6, 1917. Therefore, at the time of the passage of the deportation statute of 1920 and the consideration of the bills which eventually resulted in the passage of that act, the regulation which had provided for removal of alien enemies was no longer in existence. Until Christmas Day, 1918, Regulation 8 of the Proclamation of April 6, 1917, was in effect, but carried a much narrower removal power than that sought by the Attorneys General and the Secretary of Labor.

the present Attorney General, charged with the enforcement of the removal provisions of the Alien Enemy Act, is entitled to at least as much weight as the opinions of those who were not charged with that duty. *Cf. Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315. In any event, the words of the statute are so clear that resort to administrative construction is needless, and, even if the statute were less clear, an ambiguous administrative construction could afford no aid. *Cf. Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16; *Estate of Sanford* v. *Commissioner*, 308 U. S. 39, 49.

Accordingly, we submit that, as a matter of pure statutory construction, there can be no doubt that Congress intended that the power granted the President under the Alien Enemy Act would remain available for his discretionary exercise until the termination of the state of war by treaty or by unilateral legislative or executive action. We see no need for argument to illustrate that the aftermath of the actual hostilities of World War II exceeds in delicacy, complexity, and duration, any situation that has ever faced any of the nations of the world in the past. And consideration of the actual complexity involved in "termination of war," lies at the core of the view, repeatedly expressed by this Court, that the termination date be fixed by "* * * some public act of the political departments of the government * * *." *The Protector*, 12 Wall. at 701-702; *United States* v. *Anderson*, 9 Wall. at 70. In *Commercial Trust Co.* v. *Miller*, 262 U. S. at 57, this Court specifically stated that:

> A court cannot estimate the effects of a great war and pronounce their termination at a particular moment of time, and that its consequences are so far swallowed up that legislation addressed to its emergency had ceased to have purpose or operation with the cessation of the conflicts in the field. Many problems would yet remain for consideration and solution, and such was the judgment of Congress * * *.

See also *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 167. The legislative history of the Alien Enemy Act itself underscores the purpose of Congress to commit to the President, and to him alone, within certain broad limits, the authority to decide when and how to exercise the power granted to him. For example, Mr. Sewall's remarks (Annals of Congress, 5th Cong., 2d Sess., p. 1790) are pertinent:

> The intention of this bill is to give the President the power of adjudging what is proper to be done, and to limit his authority in the way proposed by this bill. In many cases, it would be unnecessary to remove or restrict aliens of this description; and he believed it impossible for Congress to describe the cases in which aliens or citizens ought to be punished, or not; but the President would be able to determine this matter by his proclamation.

And in one of the first cases to be decided under the Alien Enemy Act, *Lockington's Case*, Brightly (Pa.) 269, 280, Chief Justice William Tilghman pointed out that

> The president, being best acquainted with the danger to be apprehended, is best able to judge of the emergency which might render such measures necessary. Accordingly, we find that the powers vested in him are expressed in the most comprehensive terms. He is to make any regulations which he may think necessary for the public safety, so far as concerns the treatment of alien enemies. It is certain, that these powers create a most extensive influence, which is subject to great abuse; but that was a matter for the consideration of those who made the law, and must have no weight with the judge who expounds it. The truth is, that, among the many evils of war, it is not the least, to a people who wish to preserve their freedom, that, from necessity, the hands of the executive power must be made strong, or the safety of the nation will be endangered.

The wisdom of this judicial deference to executive or legislative decision as to the termination of war for various

purposes can be specifically illustrated by a realistic consideration of the situation covered by the Alien Enemy Act. First, we believe that a denial of the power to deport alien enemies during "declared war" but after armistice or unconditional surrender would be virtually tantamount to a denial of any power to deport alien enemies. This was clearly the case in the situation which existed at the time that the Alien Enemy Act was passed by the Fifth Congress. Embargoes on United States shipping were a well known feature of that period, [20] and this country's weakness as a maritime power, and the impossibility of landing persons on a hostile shore during hostilities were presumably well known.[21] That the physical difficulties and dangers of deportation during active hostilities have not been dissipated by our growth in military strength can be graphically

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[20] Only one month prior to the passage of the Act, United States ships had been barred from French ports (Act of June 13, 1798, 1 Stat. 565). Earlier, in 1794, a thirty-day embargo forbade United States ships from leaving foreign ports (Joint Resolution, March 26, 1794, 3d Cong., 1st Sess., 1 Stat. 400). The Act of June 4, 1794, empowered the President to lay embargoes "whenever, in his opinion, the public safety shall so require" (1 Stat. 372; see 3 *The American Secretaries of State and Their Diplomacy* (1927), p. 132.

Embargoes were again enacted on December 22, 1807 (2 Stat. 451) and April 4, 1812 (2 Stat. 700). See also Acts of January 9, 1808 (2 Stat. 453), March 12, 1808 (2 Stat. 473), April 25, 1808 (2 Stat. 499), and January 9, 1809 (2 Stat. 506), supplementing the Embargo Act of 1807.

[21] The United States felt itself unable, in 1788, to compel the release by the Barbary Pirates of twenty-two United States citizens enslaved in the Pirate ports. It was not until after the close of the War of 1812 that this Government finally compelled the Pirate Powers to sign treaties forever renouncing their rights to tribute from the United States. Hockett, *Political and social growth of the United States 1492-1852* (1937), 365; 3 *Encyclopedia Americana* (1944), 233; Wright and MacLeod, *The First Americans in North Africa* (1945).

The Department of the Navy was created by the Act of April 30, 1798 (1 Stat. 553).

Physical deportation of alien enemies to their native lands was as difficult during the actual hostilities of the Revolutionary War and the War of 1812 as during the "Naval War of 1797" between this country and France.

illustrated by reference to the danger to alien enemies themselves involved in such a program. As recently as March 13, 1941, the then Attorney General, Robert H. Jackson, wrote the Chairman of the House Committee on the Judicary to point out that world conditions were such that "we must cease to rely solely upon deportation as a protection of our society against undesirable aliens and must adopt a realistic policy based upon the impracticability of deportation." His letter states (Hearings, Subcommittee No. 2 of the H. Committee on the Judiciary, H. R. 3, 77th Cong., 1st sess., p. 8):

> Because of existing war conditions there are no sailings to any European country except the British Isles, Portugal, and Spain. At least, as to England and Ireland, a grave question arises whether the extraordinary dangers of the high seas do not make deportation a sort of contingent sentence of death. In spite of misgivings on the subject, on December 23, 1940, it was decided to proceed with the deportation of seven British and three Dutch subjects. They left Philadelphia on the Dutch Steamship *Soemba*. This ship went down off Nova Scotia on January 5, and seven of the deportees perished.

A further, and more terrible illustration of this danger, can be shown by the sinking of the British *Arondora Star* on July 2, 1941, while transporting 1,500 German and Italian internees to overseas custody.

Aside from the virtual impossibility of forcibly unloading on the shores of a powerful foe its subjects whose residence this country deems dangerous, there is the additional consideration that even where such power exists, the national interest does not permit the dissipation of naval resources in such militarily useless activities. The only tolerable alternative is to wait until hostilities have reached such a state that such transfers can be made without bloodshed and without straining overtaxed maritime facilities.

Second, and quite apart from the difficulty attending deportations during actual hostilities, consideration should be given to the fact that alien enemies deported during such hostilities might carry with them information or skills which the enemy power would use to our detriment. See 3 Hyde, *International Law* (1945), p. 1721. This point was explicitly recognized by the courts in connection with the administration of the Alien Enemy Act during the War of 1812. In *Lockington's* case, Brightly (Pa.) 269, 277-278, Chief Justice Tilghman said:

> I do not consider, as has been contended by Mr. Lockington's counsel, that the apprehending, restraining and securing, here mentioned, are to be intended solely for the purpose of removal out of the United States. It is a provision for the public safety; which may require that the alien should not be removed, but kept in the country under proper restraints . . .

Similarly, in *Lockington* v. *Smith*, 15 Fed. Cas. No. 8,448, p. 760 (C. C. D. Pa.), Mr. Justice Washington recognized that the interests of national defense might require that certain alien enemies not be permitted to leave the United States during hostilities. Referring to the argument that the Act authorized restraint only if the alien enemy was to be removed from the United States, Justice Washington said:

> If this be the true construction of the act, it would follow that, however dangerous it might be, under any supposed circumstances, for alien enemies to quit the United States, possessed of information useful to the enemy, and detrimental to this nation, they must nevertheless be either sent away, or be suffered to go at large, protected spies in the service of the enemy, and possibly in the vicinity of their armies and navy. . . . It seems perfectly clear, that the power to remove was vested in the president, because, under certain circumstances, he might deem that measure most effectual to

guard the public safety. But he might also cause the alien to be restrained or confined, if in his opinion the public good should forbid his removal.

Third, the continuation of the Presidential power over alien enemies beyond the termination of actual combat provides an occasion for reconsideration by the President of the need for removing interned alien enemies from the country. There is some possibility that actual combat might, prior to its termination, dwindle sufficiently to permit the mass removal of interned alien enemies, a step which might be considered necessary if the Presidential power to remove were deemed to lapse with the termination of actual fighting. Under the construction which we believe must be placed upon this statute an opportunity is afforded for the reconsideration of the case of each alien enemy on further hearing, and the President or his delegate might well, on the facts of an individual case, determine that actual removal had become unnecessary. This reconsideration in connection with the issuance of removal orders has, in fact, been carried out under Proclamation 2655 and a substantial number of interned alien enemies have been released.

Finally, reference should be made to petitioners' contention that the Presidential power to remove them under the Alien Enemy Act has lapsed "* * * inasmuch as there is no existing government of Germany * * *" (R. 6). This contention apparently means that the collapse of the Hitler regime automatically terminated the President's power under the Alien Enemy Act. But it is sufficient to state, as did the Circuit Court of Appeals for the Second Circuit, that "though the government changes, the nation remains, with rights and obligations unimpaired." *United States ex rel. Kessler* v. *Watkins*, 163 F. 2d 140, 143 (C. C. A. 2), certiorari denied, No. 414, this Term. And in *Clark* v. *Allen*, 331 U. S. 503, 514, this Court rejected the

argument that a treaty with Germany could no longer be deemed in effect because Germany "has ceased to exist as an independent national or international community." Surely, if there is a sufficient governmental entity in Germany to permit of the continuance of a treaty to which the German government is a party, there is a sufficient governmental entity in Germany to permit of a continuance of a state of war with that nation. The political branches of our government and of the other allied governments plainly contemplate the ultimate negotiation of a treaty of peace with Germany. If petitioners' argument in this respect were to be accepted, all of those powers of government which depend upon the existence of a state of war would terminate simply because the Hitler regime has collapsed and despite the fact that problems of great magnitude remain to be solved before the restoration of peace. Cf. Note, *Judicial Determination of the End of the War* (1947), 47 Col. L. Rev. 255, 257.

III

The Alien Enemy Act, as Applied in This Case, Is Constitutional

Having come into being as a wartime statute applicable only to alien enemies in time of war or threatened war, the Alien Enemy Act must be assessed, for constitutional purposes, by measuring the power exercised against the war powers conferred by the Constitution. The task of making that assessment is less difficult than in the usual constitutional case: there is no problem of applying necessarily broad language in the Constitution to a situation which could not have been foreseen by its draftsmen; the problem of alien enemies was not new in 1789, and there have come down to us statements of the Founding Fathers in which explicit recognition is given to the power over alien enemies

as an attribute of the war power. The task of constitutional judgment is made easier too by the fact that the very legislation with which we are concerned was enacted by an early Congress—the Fifth—whose membership included many of the men who had participated in the drafting and adoption of the Federal Constitution.

The broad war power of the National Government was early recognized as including a summary power of "capture" over enemy aliens. In his report on the Virginia Resolutions, Madison distinguished between the Alien Enemy Act and the alien and sedition laws (see *supra*, note 1), and said that (4 Elliott's Deb. 554)

> much confusion and fallacy have been thrown into the question, by blending the two cases of *aliens, members of a hostile nation; and aliens, members of friendly nations.* These two cases are so obviously and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded; and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of Congress, passed at the same session, and comprised in the same publication; the one providing for the case of "alien enemies;" the other "concerning aliens" indiscriminately, and consequently extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and of course to treat it and all its members as enemies.

This statement as to the plenary power of the Federal Government over enemy aliens reflected a view from which there was little dissent on the part of the early statesmen of the Republic. Thus Mr. Gallatin, who vigorously opposed the alien and sedition laws (Annals of Congress, 5th Cong.,

2d Sess., pp. 1980-1983), made it clear that he distinguished between the rights of alien friends and alien enemies—

> although Congress has not the power to remove alien friends, it cannot be inferred, as had been objected, that it had not the power to remove alien enemies; this last authority resulted from the power to make all laws necessary to carry into effect one of the specific powers given by the Constitution. Among these powers is that of declaring war, which includes that of making prisoners of war, and of making regulations with respect to alien enemies, who are liable to be treated as prisoners of war. By virtue of that power, and in order to carry it into effect, Congress could dispose of the persons and property of alien enemies as it thinks fit, provided it be according to the laws of nations and to treaties.

The plenary power to dispose of the persons and property of alien enemies was not one peculiar to the United States of America. The consistent pronouncements of the English courts in decisions roughly contemporaneous with the adoption of our Constitution and the enactment of the Alien Enemy Act reflected a recognition of at least as sweeping a power over alien enemies.[22] The law of nations too viewed enemy alienage as a status involving rights extremely limited in nature.[23]

It is not surprising then that Chief Justice Marshall's language in *Brown* v. *United States*, 8 Cranch 110, 122-123,

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[22] See, *e. g.*, *Sylvester's Case* (1702), 7 Mod. 150; 1 Blackstone, *Commentaries*, 371-372; 1 *Halsbury's Laws of England* (1907), Section 682, p. 310; *Cro. Eliz.* 142; *The Case of Three Spanish Sailors* (1779), 2 W. Blackstone 1324; *King* v. *Depardo* (1807), 1 Taunton 25. See also, discussion of the rights and privileges of alien enemies at common law in *Porter* v. *Freudenberg*, 1 L. R. [1915], K. B. D. 857, 865 *et seq.*, and in *The King* v. *Superintendent of Vine St. Police Station (Ex parte Liebmann)*, 1 L. R. [1916], K. B. D. 268, 278; cf. this Court's opinion in *Ex parte Kawato*, 317 U. S. 69, 72-73.

[23] See Dana, *Wheaton's International Law* (1866) sec. 304 and note; Halleck, *International Law* (1861), p. 360; Woolsey, *International Law* (1867), sec. 178.

leaves little room for doubt as to the validity of the Alien Enemy Act:

> Respecting the power of government, no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. . . .
>
> . . . . . .
>
> . . . war is not an absolute confiscation of this property, but simply confers the right of confiscation.

See also *Ware* v. *Hylton*, 3 Dallas 199, 226-228, 281, and *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cranch 603, 620.[24] Indeed, Marshall cited the Alien Enemy Act particularly in support of his view that it was not the declaration of war but the Act of Congress which brought into play the absolute and uncontrolled authority which a government possesses over the persons and property of enemies. See *Brown* v. *United States*, *supra* at 126. And his characterization of the power over alien enemies as a right of "confiscation" is wholly consistent with the modern English view that an alien enemy, hostile to the welfare of the country, may properly be described as a prisoner of war and treated as such. *The King* v. *Superintendent of Vine Street Police Station (Ex parte Liebmann)*, 1 L. R. [1916], K. B. D.

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[24] And see Rawle, *View of the Constitution* (1829), p. 87; 1 Kent, *Commentaries* (1826), pp. 56-59; Story, *Commentaries on the Constitution* (1833), sec 1177, see also note in Cooley's edition.

268, 275, 277-8.[25] See also Judge Brackenridge in *Lockington's Case*, Brightly (Pa.) 269, 296.

With this wealth of constitutional authority to draw upon, this Court held, in a case arising out of the first World War, that "Congress was untrammeled and free to authorize the seizure, use or appropriation of [enemy] properties without any compensation to the owners. There is no constitutional prohibition against confiscation of enemy properties." *United States* v. *Chemical Foundation*, 272 U. S. 1, 11. The Trading with the Enemy Act, which sanctioned such confiscation, was upheld as a proper exercise of the constitutional power of Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." *Stoehr* v. *Wallace*, 255 U. S. 239, 242, quoting Article I, Sec. 8, clause 11 of the Constitution of the United States. See also Mr. Justice Holmes in *Central Trust Co.* v. *Garvan*, 254 U. S. 554, 566. In all of these cases, the Court relied primarily on *Brown* v. *United States*, 8 Cranch. 110, 122, quoted *supra*, pp. 34-35, in which Chief Justice Marshall stated that the power over enemy aliens was not the power over their property alone, but could be applied as well to their persons.

Four different Justices of this Court, in individual opin-

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[25] The English courts have held that under Section 18B of the Defence (General) Regulations, S. R. & O. 1939, No. 927, p. 715, as amended by S. R. & O. 1939, No. 978, and No. 1681, pp. 811, 815; and S. R. & O. 1940, Vol. II, No. 681, p. 24, No. 770, p. 30, and No. 942, p. 58, which confers on the Home Secretary the power to order imprisonment of any person, citizen or alien, believed dangerous to the public safety, the statement of the Home Secretary that he had reasonable cause to believe that the person concerned should be imprisoned, as evidenced by his signature to the imprisonment order, is sufficient answer to a petition for a writ of *habeas corpus*. *Liversidge* v. *Anderson* (1941), 3 All Eng. R. 338 (H. L. 1941). See also *Liversidge* v. *Anderson and Morrison* (1941) 2 All. Eng. R. 612 (C. A. 1941)); *Stuart* v. *Anderson and Morrison* (1941), 2 All Eng. R. 665 (K. B. 1941); *Rex* v. *Home Party, ex parte Greene* (1941), 3 All Eng. R. 104 (C. A. 1941); *Rex* v. *Home Secretary, ex parte Budd* (1941), 2 All Eng. R. 749 (K. B. 1941).

ions or on circuit, have expressly or impliedly upheld the removal provisions of the Alien Enemy Act. See Mr. Justice Washington in *Lockington* v. *Smith*, 15 Fed. Cas. No. 8448; Mr. Justice Iredell in *The Case of Fries*, 9 Fed. Cas. No. 5126 at p. 831; Mr. Justice Story, dissenting in *Brown* v. *United States*, 8 Cranch 110, 153, and Chief Justice Marshall in an unreported case referred to in *Lockington's Case*, Brightly (Pa.) 269, 283, 296. See also Chief Justice Marshall in *Brown* v. *United States*, 8 Cranch 110, 122-123; Kent, C. J., in *Clark* v. *Morey*, 10 Johns. (N. Y.) 69, 71, and the opinion of Attorney General Caleb Cushing, August 31, 1855, 7 Op. Att'y Gen. 453, 454. There has been no dissent from this view.

Although this Court has never had occasion directly to pass on the validity of the Alien Enemy Act it has upheld acts providing for the deportation of friendly aliens. See, *e.g.*, *Fong Yue Ting* v. *United States*, 149 U. S. 698; *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425, and cases cited. There would seem to be no doubt then, as to the right to remove alien enemies, for such a right rests not only on the ordinary power of a sovereign to deport aliens, but also on the war powers of the Government.

In the only case, prior to this war, in which the constitutionality of the Alien Enemy Act has been discussed at length (*De Lacey* v. *United States*, 249 Fed. 625), the Circuit Court of Appeals for the Ninth Circuit sustained the Act as a valid exercise of the war power, under which alien enemies could be summarily restrained or removed. In rejecting the argument that the Act deprives alien enemies of their liberty without due process of law, the court said (249 Fed. at 626) that

> The sections under which these alien enemies were held were originally enacted as the Alien Enemy Act of July 6, 1798, and from that date to this, although

occasion has seldom arisen to enforce the statute, no question has been made of its constitutionality. While, as to property rights and life and liberty, all aliens domiciled in the United States, or temporarily therein, are accorded the equal protection of the law, and due process of law, such is not the case as to alien enemies. "Alien enemies have no rights and no privileges, unless by special favor, during time of war." 2 C. J. 1047. Such was the common law. "Alien enemies have no rights, no privileges, unless by the king's special favor, during time of war." 1 Blackstone, 372. There is nothing in the Constitution or laws of the United States which in any way has changed the common-law rule, or restricted the power of Congress to enact the alien enemy law. Power to enact such a law may at times be essential to the preservation of the government, and the right of all nations to exercise it is recognized in international law.

In *Banning* v. *Penrose*, 255 Fed. 159 (N. D. Ga.), the court noted that the constitutionality of the Act was conceded, and its validity has been upheld or assumed in cases arising out of both this war and World War I.[26]

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[26] World War II: *Citizens' Protective League* v. *Clark*, 155 F. 2d 290 (App. D. C.), certiorari denied, 329 U. S. 787; *United States ex rel Kessler* v. *Watkins*, 163 F. 2d 140 (C. C. A. 2), certiorari denied, No. 414, this Term; *United States ex rel. Ludecke* v. *Watkins*, 163 F. 2d 143 (C. C. A. 2), certiorari denied, No. 147 Misc., this term; *United States ex rel Hack* v. *Clark*, 159 F. 2d 552 (C. C .A. 7); *United States ex rel. Khauer* v. *Jordan*, 158 F. 2d 337 (C. C. A. 7), certiorari denied, 331 U. S. 810; *United States ex rel. Schwarzkopf* v. *Uhl*, 137 F. 2d 898 (C. C. A. 2); *United States ex rel. Schlueter* v. *Watkins*, 158 F. 2d 853 (C. C. A. 2); *Ex parte Ventura*, 44 F. Supp. 520 (W. D. Wash.); *United States ex rel. Zdunic* v. *Uhl*, 137 F. 2d 858 (C. C. A. 2); *United States ex rel. Von Heymann* v. *Watkins*, 159 F. 2d 650 (C. C. A. 2); *United States ex rel. Von Kleczkowski* v. *Watkins*, 71 F. Supp. 429 (S. D. N. Y.); *United States ex rel. D'Esquiva* v. *Uhl*, 137 F. 2d 903 (C. C. A. 2); *United States ex rel. Umecker* v. *McCoy*, 54 F. Supp. 679 (D. N. D.), appeal dismissed, 144 F. 2d 354; *United States ex rel. Gregoire* v. *Watkins*, 164 F. 2d 137 (C. C. A. 2); *Ex parte Gregoire*, 61 F. Supp. 92 (N. D. Cal.); *United States ex rel. DeCicco* v. *Longo*, 46 F. Supp. 169 (D. Conn.); *United States ex rel. Steinvorth* v. *Watkins*, 159 F. 2d 50 (C. C. A. 2); *United States ex rel. Reichel* v.

There would appear to be no doubt then as to the constitutional power of Congress to provide for the removal of alien enemies at the height of a war. Nor is there any substantial doubt as to the continuing Congressional power to accomplish that end so long as there are alien enemies, or, to put it another way, so long as there is a declared war. Indeed when the question now before this Court was raised in one of the earlier aspects of this litigation, the District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia held that no substantial question of constitutionality was raised and, hence, that a hearing before three-judge district court was not required. This Court denied a writ of certiorari to review this decision of the Court of Appeals. *Citizens Protective League* v. *Clark*, 155 F. 2d 290, certiorari denied, 329 U. S. 787. Accord: *United States ex rel. Schlueter* v. *Watkins*, 158 F. 2d 853 (C. C. A. 2); *United States ex rel. Knauer* v. *Jordan*, 158 F. 2d 337 (C. C. A. 7), certiorari denied, 331 U. S. 810; *United States ex rel. Hack* v. *Clark*, 159 F. 2d 552 (C. C. A. 7).

What has already been said with reference to the scope of the Alien Enemy Act itself (see *supra*, pp. 16-32) is virtually dispositive, we think, of the contention that there is no constitutional power to remove German alien enemies after the unconditional surrender of Germany. This Court has only recently had occasion, once again, to reiterate that the war power may survive the termination of actual hos-

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Carusi, 157 F. 2d 732 (C. C. A. 3), certiorari denied, 330 U. S. 842; *In re Territo*, 156 F. 2d 142 (C. C. A. 9).

World War I: *De Lacey* v. *United States*, 249 Fed. 625 (C. C. A. 9); *Grahl* v. *United States*, 261 Fed. 487 (C. C. A. 7); *Ex parte Graber*, 247 Fed. 882 (N. D. Ala.); *Minotto* v. *Bradley*, 252 Fed. 600 (N. D. Ill.) *Ex parte Fronklin*, 253 Fed. 984 (N. D. Miss.); *Ex parte Risse*, 257 Fed. 102 (S. D. N. Y.); *Ex parte Gilroy*, 257 Fed. 110 (S. D. N. Y.); *Hanning* v. *Penrose*, 255 Fed. 159 (D. Ga.); *Halpern* v. *Commanding Officer, etc.*, 248 Fed. 1003 (E. D. N. Y.).

tilities. *Woods* v. *Miller Co.*, No. 486, this Term, decided February 16, 1948. As the Court put it in *In re Yamashita*, 327 U. S. 1, 12, citing *Stewart* v. *Kahn*, 11 Wall. 493, 507: "The war power * * * is not limited to victories in the field, but carries with it the inherent power to guard against the immediate renewal of the conflict, and to remedy, at least in ways Congress has recognized, the evils which the military operations have produced." Indeed in *Commercial Trust Company* v. *Miller*, 262 U. S. 51, 55, 57, this Court sustained a seizure of enemy property as a proper exercise of the war powers even after the cessation of hostilities, the Joint Resolution of Congress declaring the first war with Germany to be at an end, and the Presidential Peace Proclamation.

That power resides in the Congress and in the President to provide for the removal of alien enemies after the unconditional surrender of Germany but while a state of war exists seems clear from these authorities. For the courts to deny that power would be to reject the legislative and executive determination that it is a necessary and appropriate exercise of the war power—a determination which this Court has been extremely loath to make. See cases cited *supra*, pp. 18, 26-27. To hold that the Federal Government cannot provide for the removal of alien enemies because active hostilities have ended would be to reject the political determination, announced at the Inter-American Conference on Problems of War and Peace, held at Mexico City in February and March, 1945, that "The Axis powers, although they realize that they have lost the war, nevertheless hope to win the peace by reconstructing their centers of influence throughout the world, by disseminating their destructive ideology and by creating discontent and discord among the American Republics." [27]

[27] *Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace* (Department of State

In *Woods* v. *Miller Co., supra*, this Court pointed out that in cases such as that, that case involving rent control, the question whether the war power has been properly employed "is open to judicial inquiry", and that the Congressional judgment on that score "is entitled to the respect granted like legislation enacted pursuant to the police power." Slip opinion, p. 6. While we believe that the Congressional and Executive actions here involved could withstand the light of such a judicial inquiry, we wish to make clear our view that the role of the courts, in this type of case, is a much more limited one.

Bound up as this question of removal of alien enemies is with our foreign policy, and the appropriateness of the Executive action depending as it does on considerations often not of present fact but of international political prognosis, the remarks of this Court with reference to a less delicate aspect of the conduct of our foreign relations have particular force:[28]

> • • • The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can court sit *in camera* in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions

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Publication 2497. Conference Series 85), Appendix I, p. 71. Among the specific steps recommended by the Conference were (*id.* at 72):

> a) Measures to prevent any person whose deportation has been deemed necessary for reasons of Continental security, from further residing in this Hemisphere, if such residence would be prejudicial to the future security or welfare of the Americas;
>
> b) Measures to prevent the admission to this Hemisphere, now and after the cessation of hostilities, of agents of the Axis powers or their satellites.

[28] *Chicago Airlines* v. *Waterman*, Nos. 78 and 88, this Term, decided February 9, 1948, Slip opinion, pp. 7-8.

as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. *Coleman* v. *Miller*, 307 U. S. 433, 454; *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319-321; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302.

Conclusion

The denial, by the courts below, of the petition for a writ of habeas corpus should be affirmed.

Respectfully submitted,

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March, 1948.

APPENDIX A

The Alien Enemy Act of 1798, R. S. 4067-4070, 50 U. S. C. 21-24, provides:[29]

§ 21. Restraint, regulation, and removal.

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety (R. S. § 4067; Apr. 16, 1918, ch. 55, 40 Stat. 531).

§ 22. Time allowed to settle affairs and depart.

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipu-

[29] The section numbers used are those which appear in Title 50 of the United States Code.

lated by any treaty then in force between the United States and the hostile nation or government of which he is a native, citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality (R. S. § 4068).

§ 23. Jurisdiction of United States courts and judges.

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed (R. S. § 4069).

§ 24. Duties of marshals.

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such

removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be (R. S. § 4070).

APPENDIX B

Proclamation 2655, issued by President Truman on July 14, 1945, provides (10 Fed. Reg. 8947):

Proclamation 2655

Removal of Alien Enemies by the President of the United States of America

A Proclamation

Whereas section 4067 of the Revised Statutes of the United States (50 U. S. C. 21) provides:

> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and

to establish any other regulations which are found necessary in the premises and for the public safety;

WHEREAS sections 4068, 4069, and 4070 of the Revised Statutes of the United States (50 U. S. C. 22, 23, 24) make further provision relative to alien enemies;

WHEREAS the Congress by joint resolutions approved by the President on December 8 and 11, 1941, and June 5, 1942, declared the existence of a state of war between the United States and the Governments of Japan, Germany, Italy, Bulgaria, Hungary, and Rumania;

WHEREAS by Proclamation No. 2525 of December 7, 1941, Proclamations Nos. 2526 and 2527 of December 8, 1941, Proclamation No. 2533 of December 29, 1941, Proclamation No. 2537 of January 14, 1942, and Proclamation No. 2563 of July 17, 1942, the President prescribed and proclaimed certain regulations governing the conduct of alien enemies; and

WHEREAS I find it necessary in the interest of national defense and public safety to prescribe regulations additional and supplemental to such regulations:

NOW, THEREFORE, I, Harry S. Truman, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes of the United States, do hereby prescribe and proclaim the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations:

All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 14th day of July in the year of our Lord nineteen hundred and forty-five and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN.

By the President:

JAMES F. BYRNES,
Secretary of State.

APPENDIX C

Regulations of the Attorney General (10 Fed. Reg. 12189) pursuant to Presidential Proclamation 2655:

Title 28—Judicial Administration

Chapter I—Department of Justice

Part 30—Travel and Other Conduct of Aliens of Enemy Nationalities

REMOVAL OF ALIEN ENEMIES FROM THE U. S.

Sec.

30.71 Removal from the United States of alien enemies.
30.72 Order of the Attorney General.
30.73 Service of removal order on alien enemy.
30.74 Thirty-day period for voluntary departure.
30.75 Involuntary removal from the United States.

Authority: §§ 30.71 to 30.75, inclusive, issued under R. S. 4067; 50 U. S. C. 21.

§ 30.71 *Removal from the United States of alien enemies.* The Proclamation of the President of the United States, No. 2655 (10 F. R. 8947), dated July 14, 1945, provides in part:

All alien enemies * * * interned within * * * the United States * * * who shall be deemed by the

Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Attorney General may prescribe.

§ 30.72 *Order of the Attorney General.* When a determination has been made by the Attorney General that an interned alien enemy is deemed to be dangerous to the public peace and safety of the United States because he has adhered to an enemy government or to the principle of government thereof, an order will be signed by the Attorney General directing that the said alien enemy depart from the United States within thirty (30) days after notification of the order and that, if he fails or neglects so to depart, the Commissioner of Immigration and Naturalization is to provide for the alien enemy's removal to the territory of the country of which he is a native, citizen, denizen or subject.

§ 30.73 *Service of removal order on alien enemy.* A copy of the Attorney General's order of removal will be delivered to the alien enemy at the place where he is interned.

§ 30.74 *Thirty-day period for voluntary departure.* An alien enemy who is the subject of a removal order shall have thirty (30) days after receiving notification of the removal order to depart from the United States. Unless the public safety otherwise requires, the Commissioner of Immigration and Naturalization is authorized to release such alien enemy from internment under appropriate parole safeguards in order that the alien enemy may settle his personal and business affairs, provide for the recovery, disposal, and removal of his goods and effects, and make arrangements to depart from the United States.

§ 30.75 *Involuntary removal from the United States.* In the event that an alien enemy, who is the subject of a removal order, fails or neglects to depart from the United States within the above-mentioned thirty-day period, the Commissioner of Immigration and Naturalization will take the alien enemy into custody and will provide for his removal to the territory of the country of which he is a native, citizen, denizen or subject, as soon as transportation is available.

Approved: September 26, 1945.

TOM C. CLARK,
Attorney General.

(F. R. Doc. 45-18005; Filed Sept. 27, 1945; 10:11 a. m.)

APPENDIX D

Name	Date of Removal Order
Paul Ahrens	1-15-46
Max Armbruster	6- 8-46
Willi Backofeh	1-11-46
Paul Bante	1-12-46
Maria Bertelmann (Released 2-6-48)	1-12-46
Else Brinck (Brink)	1-15-46
Walter Brink	1-15-46
Karl J. Boehm	1-18-46
Max Blank	12-13-45
Otto Braunger	1-25-46
Albert Brueckner	1-11-46
Alreich Cappelmann	5-27-46
Ernst E. Christoph	1-11-46
Hans Diebel	4- 3-46
Hans Doelle	1-18-46
Johann R. Enders	1-15-46
Walter Engelbert	1-11-46
Wilhelm Engelbert	12-12-45 (Without hrg) 4- 3-46 (With hrg)
Anna Faller	1-15-46
Xaver Faller	1-15-46
Richard Felis	1-12-46

Name	Date of Removal Order
Walter Feltz	1-11-46
John C. Fitting	1-15-46
Kurt Fries	1-18-46
Luise Fritsch	10-18-46
Rudolf Funk	2- 5-46
(Released 11-28-47)	
Paul Geis	4- 2-46
Adolf Goelzer	1-15-46
Otto Grimm	1-12-46
Georg Grytzyk	1-18-46
Rudolf Gudert	1-15-46
Wilhelm Hack	2-27-46
Helene Hackenberg	1-18-46
Rudolf Hackenberg	1-18-46
Robert Hartmann	1-15-46
Albert Haug	1-29-46
Erna Haupt	2-25-46
Heinz Heinzen	1-18-46
Werner Hofling	1-18-46
(Released 11-28-47)	
Hedwig Hohmann	1-15-46
Martin Hohmann	1-15-46
Paul Hohmann	1-15-46
Hermann Hoehn	1-12-46
Kurt Holz	10-16-45 (Without hrg)
	1-25-46 (With hrg)
Andreas Heinrich Jans	1-15-46
Hans Juhl	1-11-46
Johannes L. Jung	1-12-46
Wolfgang T. Jung	3- 4-46
(Released 11-28-47)	
Wilhelm Kaecher	1-15-46
Joseph Kaiser	10-16-45
(Released 11-28-47)	
Maria Kerling	1-18-46
(Released 11-28-47)	
Julius Kessler	1-18-46
Hans Kippenberg	1-19-46
August Klapproth	3-27-46
Josef Klein	6-25-46
George B. Knaepper	1-11-46
Paul Knauer	9- 4-46
Wilhelm Knaup	1-12-46
Fritz Koehler	1-11-46
Hermann Koetter	1-19-46
Mathias Kohler	1-15-46
Hans L. Kohpeiss	1-14-46

Name	Date of Removal Order
Albert Kolb	1-11-46
Bruno Koop, Jr.	1-14-46
Bruno Koop, Sr.	1-14-46
Alfred Krakau	2- 5-46 (Without hrg)
	5-14-47 (With hrg)
Heinz Krebs	1-11-46
Joseph Kuehn	3- 6-46
Wilhelm Lachnicht	3-29-46
(Released 11-28-47)	
Ernst Lack	1-18-46
Hans Laudage	1-15-46
Alois Lieb	1-11-46
(Released 1-31-48)	
Gotthilf Ludwig	1-18-46
Wilhelm Mank	1-11-46
Elisabeth Meuser	1-15-46
Waldemar Meuser	1-15-46
Gertrud Neubacher	12-28-45
Otto Neubacher	12-28-45
Georg Neupert	1-14-46
Karl Nuernberger	1-14-46
John Oldin	1-14-46
Martin Ortner	1-18-46
Adolf Pasquay	12-28-45
Hans Poehner	1-11-46
Max Rapp	1-11-46
Rosine Rapp	10-13-42
Erich Raubenheimer	1-11-46
Hartwig Reese	1-12-46
Henry Reese	1-18-46
Kasper Rehle	9-27-45
Maximilian Reichel	4- 4-46
Werner Reimann	3- 6-46
Ludwig Resch	1-31-46
Georg Riemenschneider	10- 9-45
Hermann Roehm	1-14-46
Theodore Kurt Roehner	2- 5-46 (Without hrg)
(Released 11-28-47)	10- 4-46 (With hrg)
Anna Rubischon	4- 2-46
Edwin Rubischon	4- 2-46
Anton Rueble	1-15-46
Gerhard Schacht	4- 4-46
Peter Schau	1-11-46
Wilhelm Schaumann	1-15-46
Martin Schluckwerder	1-18-46
Hans J. Schmidt	1-11-46

Name	Date of Removal Order
Kurt Schmidt	1-15-46
Bernhard Schmolke	1-11-46
Hans Schnoor	1-25-46
Franz Schrader	1- 8-46
Albert Schroeder	1-11-46
Siegfried Schulte	1-12-46
Karl Schweitzer	1-14-46
Kurt Schweitzer	1-14-46
Ernst Schwenk	1-14-46
Hermann Schwinn	3-27-46
Herbert C. Seyfferth	2- 5-46 (Without hrg) 6-12-46 (With hrg)
Gerhard Sprenger	1-15-46
Agnes Stephan	1-18-46
Meta Stoehr	6-27-46
Johann Stoll	1-18-46
Walter Sykora	1-11-46
Karl Ueberschoer	1-29-46
Hugo Unrecht	1-29-46
Otto Wagner	1-14-46
Hans E. Weik*	1-15-46
Hans Wichers	1-15-46
Johann Wichers	1-15-46
Selma Wichers	1-15-46
Maria Willumeit	5-23-46
Paul Zitsmann	1-18-46

*Should read Emma Weik Jans.

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